

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ANDREW WALKER, JR.,

Plaintiff,

-v-

MONICA RICH KOSANN *et al.*,

Defendants.
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23 Civ. 4409 (JPC) (JW)

ORDER ADOPTING
REPORT AND
RECOMMENDATION

JOHN P. CRONAN, United States District Judge:

Plaintiff, who is appearing *pro se*, brings this action alleging patent infringement. *See* Dkt. 5 (Amended Complaint). All Defendants have moved to dismiss: Provenance Gems, LLC has moved to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(2) for lack of personal jurisdiction, Dkts. 30, 62, and the other Defendants—eBay, Inc., Fisher-Price, Inc., Monica Rich Kosann, Woodrow Jewelers, and Amazon Advertising LLC—have moved to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim. Dkts. 20-22, 45-47, 52-53, 56-58. By Order dated February 16, 2024, the Honorable Jennifer E. Willis, to whom this case has been referred, issued a Report and Recommendation recommending that all Defendants’ motions to dismiss be granted and that Plaintiff be granted leave to amend his Amended Complaint. Dkt. 89 (“Report and Recommendation”) at 2, 21.

A district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge” in a Report and Recommendation. 28 U.S.C. § 636(b)(1)(C). If a party submits a timely objection to any part of the magistrate judge’s disposition, the district court will conduct a *de novo* review of the contested section. Fed. R. Civ. P. 72(b)(3); *see also United States v. Male Juvenile*, 121 F.3d 34, 38 (2d Cir. 1997). If no

objections are made, the Court reviews the Report and Recommendation for clear error. *See, e.g., Wilds v. United Parcel Serv.*, 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003).

The Report and Recommendation, citing both Rule 72 of the Federal Rules of Civil Procedure and 28 U.S.C. § 636(b)(1), advised the parties that they had fourteen days from service of the Report and Recommendation to file any objections, and warned that failure to timely file such objections would result in waiver of any right to object. Report and Recommendation at 21-22. The Report and Recommendation further advised the parties that any objections “shall be filed with the Clerk of the Court and on [the Electronic Case Filing (‘ECF’) system].” *Id.* at 21. The Report and Recommendation was filed on ECF on February 16, 2024, and entered that day.¹ No objections have been filed and the time for making any objections has passed.² The parties have therefore waived the right to object to the Report and Recommendation or to obtain appellate review. *See Frank v. Johnson*, 968 F.2d 298, 300 (2d Cir. 1992); *see also Caidor v. Onondaga Cnty.*, 517 F.3d 601 (2d Cir. 2008).

Notwithstanding this waiver, the Court has conducted a *de novo* review of the Report and Recommendation and finds it to be well reasoned and its conclusions well founded. Accordingly, the Court adopts the Report and Recommendation in its entirety. The motions to dismiss filed by Provenance Gems, LLC, eBay, Inc., Fisher-Price, Inc., Monica Rich Kosann, Woodrow Jewelers,

¹ On May 25, 2023, Plaintiff consented to electronic service of notices and documents, including judicial orders, in this case. Dkt. 3. As a result, he has been receiving electronic service of all filings for purposes of Rule 5 of the Federal Rules of Civil Procedure and Rule 5.2 of this District’s Local Civil Rules. *See also id.* ¶ 2 (“I understand that electronic service is service under Rule 5 of the Federal Rules of Civil Procedure and Rule 5.2 of the Local Civil Rules, and that I will no longer receive paper copies of case filings, including motions, decisions, orders, and other documents.”).

² No objections have been electronically filed on the docket. In addition, in an excess of caution, the Court confirmed today that the Southern District of New York’s *Pro Se* Intake Unit has not received any submissions from Plaintiff since the issuance of the Report and Recommendation.

and Amazon Advertising LLC are granted, and Plaintiff is granted leave to file a second amended complaint. If Plaintiff elects to file a second amended complaint, he must do so within thirty days of this Order, *i.e.*, by April 3, 2024. If Plaintiff does not file a second amended complaint by April 3, 2024, or obtain an extension of time to do so by that date, the Court will direct the Clerk of the Court to close this case without further notice.

The Clerk of the Court is respectfully directed to close the motions pending at Docket Numbers 20, 30, 45, 52, and 56.

SO ORDERED.

Dated: March 4, 2024
New York, New York

A handwritten signature in black ink, appearing to read "John P. Cronan", is written over a horizontal line.

JOHN P. CRONAN
United States District Judge